

REMARKS/ARGUMENTS:

Claims 86 — 94 and 96 — 98 have been cancelled without prejudice to their patentability and may be reasserted in this or another application.

Claims 12, 14 — 17, 20 — 22, 64 — 68 and 72 - 74 stand withdrawn as being drawn to a non-elected species. It is respectfully requested that these claims be rejoined and be examined and found to be allowable.

Claims 2 and 8 have been amended in this Response.

Claim 2 has been amended by replacing the terms “strobilurin-type” with the term “strobilurin”, as suggested by the Office, and by deleting the term “substantial” in line 6 of the claim, in order to clarify the meaning of the claim. The clause comprising the last three lines of the claim, which formerly identified the members of the “strobilurin-type” group, has been deleted as being superfluous in view of the amendment of the “strobilurin” term. This identification is reasserted as dependent claim 99, which is a new claim.

In claim 8, “strobilurin-type” has been replaced by “strobilurin”.

Claims 2, 8 — 17, 20 — 29 and 64 — 85, 95, and 99 are in the case.

No new matter has been added.

Cancellation of claims drawn to non-elected inventions:

The Applicant has cancelled claims 86 — 94, identified in restriction Group II, and claims 96 — 98, identified in restriction Group III. The statement in the Action that the restriction requirement is made final is acknowledged.

Rejection of claims 2, 9 — 11, 13 and 24 — 27 under 35 USC §102(b) over Tsuda *et al.*

The Office has argued in the most recent Action that the reason for the maintenance of this ground of rejection was that the claims described the “substantial absence of pest pressure”, rather than the “absence of pest pressure”. The claims have now been amended by deleting the term “substantial”, and should now be allowable.

The Applicant has obtained entire Tsuda *et al.* publication that is cited and a copy is attached for the consideration of the Examiner. It is maintained that the entire article,

like the abstract, shows that the simeconazole treatments by Tsuda *et al.* were directed at the protection of plants and seeds from fungal pest predation and do not teach or suggest the application of simeconazole to a plant or a seed in the absence of such fungal pest pressure, as is required in each of the present claims.

Therefore, it is respectfully requested that the present rejection be reconsidered and be withdrawn.

Rejection of claim 77 under 35 USC §103(a) as obvious over Tsuda *et al.* in view of EP 067479 to Simons.

Claim 77 depends ultimately from claim 2, the patentability of which is discussed above with respect to the Tsuda *et al.* reference. Therefore, unless the features of the claim that were not supplied by Tsuda *et al.* can be found in the Simons reference, then claim 77 should also be found to be allowable.

And, in fact, it is maintained that the Simons publication, which teaches the treatment of seeds with a new, improved, flowable composition containing Captan for the purpose of protecting seeds and young seedlings against attack by fungi present in the soil does not add this teaching or suggestion. (See Background and Summary of the Simons publication; underline added for emphasis only)

It is maintained, therefore, that the rejection of claim 77 should be reconsidered and withdrawn.

Rejection of claims 2, 8—17, 19—29 and 64—85 and 95 under 35 USC §112, second paragraph, as being indefinite.

Claims 2, 8 — 17, 19 — 29 and 64 — 85 and 95 are rejected under 35 USC §112, second paragraph, as being indefinite because of the use of the term “strobilurin-type”. Claim 2 has been amended to replace the terms “strobilurin-type” with the term “strobilurin”, as suggested in the most recent Action. It is believed, therefore, that this clarifies the meaning of the claim, and it is respectfully requested that the rejection be reconsidered and withdrawn.

Rejoinder of withdrawn claims:

It is respectfully requested that upon the finding that the claims are now allowable, withdrawn claims be rejoined with the case and passed to allowance.

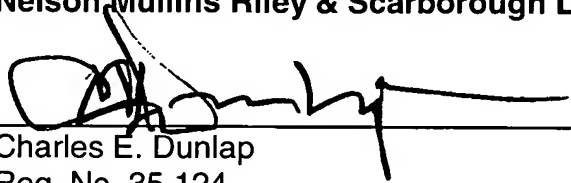
Request for reconsideration:

It is respectfully requested that the claims be reconsidered in view of the amendments described above and be found to be allowable. If one or more of the claims are found to not be allowable, a telephone call to the undersigned would be appreciated in order to resolve any remaining issues.

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Dated:

Respectfully submitted,
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